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of witnesses in addition to the informer Girdhari. Dinanath, Dallu, Chhutan, Fajji and Jiwaram son of Kewal, all identified him. We think that the case was fully proved against Ilahi Bakhsh. We allow the appeals of Thanwa and Kheoraj and setting aside the convictions and sentences in their case, we acquit them of the charge on which they were tried and direct that they be released. We dismiss the appeal of Ilahi Bakhsh and we direct that a copy of our judgment be sent to the learned Additional Judge of Moradabad.

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July 13.

APPELLATE CIVIL.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Karamat Husain.

BUDH SINGH (PLAINTIFF) v. GOPAL RAI AND OTHERS (DEFENDANTS).*

Pre-emption—Wajib-ul-arz—Construction of document—Custom or contract.

The wajib-ul-arz of a village in the Saharanpur district of the year 1867 contained the following agreement on the part of the "khewatdars" of the village that "up to the term of the settlement and in future to the termination of the next settlement they will abide by the following terms and act upon them." Amongst the subsequent provisions were certain relating to the right of pre-emption. In a later wajib-ul-arz of 1890 no mention was made of any custom of pre-emption, but it contained these words:—"For the remaining village customs see the wajib-ul-arz prepared in 1867."

Held that the wajib-ul- arz of 1867 recorded a contract and not a custom, and that the rights conferred by it would not be perpetuated by the incorporation in the later wajib-ul-arz of the customs existing in the village.

THIS was a suit to pre-empt a sale of property situate in a mahal of the village of Gumti in the Sultanpur pargana of the district of Saharanpur. The plaintiff relied upon a wajib-ul-arz of the year 1867, the provisions of which he alleged to have been adopted in a subsequent wajib-ul-arz of 1890. In the earlier wajib-ul-arz the names of the zamindars of the village, who were styled "khewatdars" were recited and it was recorded that they agreed that up to the term of the settlement and in future to the termination of the next settlement they would abide by and act upon certain terms. Amongst these was the following provision as to pre-emption:—"If any co-sharer wishes to transfer his share he can do so, first, to his own brother; and in case of refusal by him, all his co-sharers descended from a common ancestor have a

* First Appeal No. 296 of 1906 from a decree of Girdhari Lal, Subordinate Judge of Saharanpur, dated the 18th of June 1906.

right to it." In the later wajib-ul-arz of 1890 a number of matters were referred to but no mention was made of any custom of pre-emption, but there was an entry—"For the remaining village customs see the wajib-ul-arz prepared in 1867." The Court of first instance (Subordinate Judge of Saharanpur) dismissed the plaintiff's suit. The plaintiff accordingly appealed to the High Court.

Mr. *Abdul Raoof*, for the appellant.

Dr. *Satish Chandra Banerji*, for the respondents.

STANLEY, C.J., and KARAMAT HUSAIN, J.—This appeal arises out of a suit to enforce a claim for pre-emption. The property which is the subject of a sale lies in a *mahal* of the village Gumti in pargana Sultanpur, in the Saharanpur district, which village was partitioned in the year 1905. The plaintiff relies upon the wajib-ul-arz of the village prepared in the year 1867 and upon an alleged adoption of the provisions of that wajib-ul-arz in the later wajib-ul-arz of 1890. The question before us appears to depend upon the fact whether or not the wajib-ul-arz of 1867 is the record of a right of pre-emption existing by custom. If it be such a record, we are disposed to think upon the authorities that that right still continues to exist in the village. If, on the other hand, it is the record of a right existing by contract, then that right came to an end at the expiration of the settlement, and if it did come to an end at the expiration of the settlement, the language of the later wajib-ul-arz of 1890 would not perpetuate it. In the wajib-ul-arz of 1867 the names of the residents of the village, who are described as the khewatdars, are mentioned, and they purport to declare that "they agree that up to the term of the settlement and in future to the termination of the next settlement they will abide by the following terms and act upon them." Then follows a number of provisions, and amongst others the following provisions as to pre-emption:—"If any co-sharer wishes to transfer his share, he can do so, first to his own brother; and in case of refusal by him, all his co-sharers, descended from a common ancestor, have a right to it." Now the pre-emptor Budh Singh is a paternal uncle of the vendor, and is also a co-sharer in the village, but he is not a co-sharer in the *mahal* portion of which is the subject of the sale.

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If, however, the right to pre-empt, recorded in this wajib-ul-arz is a right existing by custom, then it would appear to us that the pre-emptor plaintiff appellant is entitled to pre-empt notwithstanding the fact that he has no share in the *mahal* portion of which is the subject of the sale. In the later wajib-ul-arz of 1890, a number of matters are referred to but no mention is made of any custom of pre-emption whatever, but the following words are to be found in it:—"For the remaining village customs see the wajib-ul-arz prepared in 1867." The plaintiff relies upon this language, and asks us to hold that it imports into this wajib-ul-arz the provision as regards pre-emption set forth in the wajib-ul-arz of 1867. It would not be unreasonable to hold that the parties intended by this language to incorporate the provisions of the earlier wajib-ul-arz as regards the custom set forth in that document. But if the right of pre-emption created by it was one arising from contract and not existing by custom, it is obvious that that right would not be perpetuated by the incorporation in the later wajib-ul-arz of the *customs* existing in the village. The right was not a right existing by custom, but a right arising from contract. Now the question as to whether or not the wajib-ul-arz of 1867 is a record of a custom or the record of a contract is one of very great difficulty. A strong argument may be based upon the language used in support of the view that it is a record of custom. We are, however, not disposed to set aside the decree of the Court below unless we are clearly satisfied that it is erroneous. We do not agree with the learned Subordinate Judge in the reasons given by him for his decision, but after giving the best consideration we can to the language of the wajib-ul-arz of 1867, we are unable to hold that it is a record of custom. This being so, the appeal fails and is dismissed with costs.

Appeal dismissed.

(See also *Maratib Husain* v. *Alam Ali*, Weekly Notes, 1907, p. 285).

Before Mr. Justice Aikman.

1908
July 21.

MAHADEO PRASAD (DEFENDANT) *v.* GORAKH PRASAD (PLAINTIFF) *

Act No. VII of 1870 *(Court Fees Act), section* 7, *ix; schedule I, article* 1— *Court fee — Decree for redemption of mortgage — Appeal on the main ground that nothing was due under the mortgage.*

Held that in the case of an appeal from a decree allowing a defendant mortgagor to redeem the mortgage on payment of a sum named therein based upon the ground that the mortgage debt has been satisfied out of the usufruct of the property mortgaged and nothing whatever was due from him the proper court fee payable was an *ad valorem* fee upon the total amount of the decree under appeal. *Nepal Rai* v. *Debi Prasad* (1) and *Reference under Court Fees Act*, 1870, (2) followed.

THIS was reference made by the Taxing Officer to the Taxing Judge under section 5 of the Court Fees Act. A memorandum of appeal having been presented for a stamp report, the Stamp Reporter made the following report:—

"This appeal has arisen out of a suit for foreclosure. The principal money expressed to be secured by the instrument of mortgage was Rs. 6,000. The defendant pleaded *inter alia*, that the mortgage debt had been paid off from the usufruct of the property, and that only 4 annas and not a 5 anna 4 pie share had been mortgaged.

"Upon the trial of the suit the lower Court passed a decree in plaintiff's favour subject to defendant's right of redemption on payment of Rs. 8,664 within six months from the date of the decree, and failing that, the entire property mortgaged, namely, 5 annas 4 pies was to be foreclosed and the defendant's right of redemption extinguished.

"The defendant appeals to this Hon'ble Court and has paid court fees on the principal mortgage money.

"Having regard to the rulings of *Nepal Rai* v. *Debi Prasad* (1) and *Reference under Court Fees Act*, 1870 (2), and to the grounds raised in the memorandum of appeal, it appears that the value of the subject-matter in dispute in appeal for the purposes of court fees is Rs. 8,664, the amount found to be payable under the mortgage in dispute, and Rs. 323 costs, total Rs. 8,987. As to costs, a distinct ground having been taken in the memorandum of appeal, an additional court fee is payable thereon (*vide*

* Stamp Report in First Appeal No. 155 of 1908.

(1) (1905) I. L. R., 27 All., 447. (2) (1905) I. L. R., 29 Mad., 367.

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Weekly Notes, 1901, p. 21). This being so, a fee of Rs. 435 is payable. Rs. 315 having been paid, there is therefore a deficiency of Rs. 120 to be made good by the defendant appellant for this Court."

This report having come before Banerji, J., as a Judge receiving applications, he made the following order :—

"Mr. Surendra Nath Sen objects to the office report. Lay before the Taxing officer."

The Taxing officer on the 3rd of May 1908 made the following reference to the Taxing Judge :—

"I have the honour to refer for decision under the provisions of section 5 of the Court Fees Act the following question:—

"The plaintiffs sued for foreclosure. The Court of first instance gave him a decree subject to the defendant's right to redeem on the payment of Rs. 8,987 within six months.

"This sum of Rs. 8,987 is made up of Rs. 6,000, the original sum secured, Rs. 2,664 interest and Rs. 323 costs.

"The defendant mortgagor appeals. His plea in appeal is that the sum secured has been satisfied out of the usufruct. He stamps his appeal under the Court Fees Act, section 7 (ix), with reference to Rs. 6,000, the amount secured by the mortgage. The office reports that the appeal should be stamped *ad valorem* on Rs. 8,987 according to article 1 of the first schedule to the same Act. Four rulings have been cited. One of these, which was delivered by the present Chief Justice, is reported in I. L. R., 27 All., at page 447.

"This ruling was agreed with by a Divisional Bench of the Madras High Court in case reported in I. L. R., 29 Mad., at p. 367. In the Allahabad case the plaintiffs had sued for redemption. They obtained a decree subject to the payment of Rs. 1,555-14-0. They considered that they were entitled to redemption on the payment of the sum smaller by Rs. 288-11-0 than Rs. 1,555-14-0. It was held that the appeal should be stamped *ad valorem* on Rs. 288-11-0.

"In the case for decision now the defendant's prayer in appeal is that he is entitled to redeem without making any payment, that is to say, he is entitled to redemption on the payment of a sum less by Rs. 8,987 than the sum decreed by the Court of

first instance. On the principal laid down in the above ruling, I think the report of the office is correct.

"Two rulings have been quoted by the learned counsel for the appellant. One is a case decided by Sir John Edge, reported in I.L.R., 13 All., 94. The ruling in this case has been dissented from in the two cases quoted above. But as far as the present matter goes, I do not think that it is opposed to the view of the office. Sir John Edge limited his rulings to appeals in which it was impossible to value the subject-matter, *e. g.*, an appeal asking for redemption subject to the payment of an unknown amount. In the present appeal the right to redeem is not contested, and the amount the appellant seeks to avoid paying is a definite sum. The remarks in the last paragraph of the judgment appear to me to deal with a case like the present, and to fully support the view that the appellant should be required to pay on Rs. 8,987.

"The second ruling referred to on behalf of the appellant is reported in I. L. R., 10 Bom. at page 41.

"I see, however, from the report of the Taxing officer in that case that the appeals there in question 're-opened the whole question of mortgage."

"This the present appeal does not do. Therefore I do not think it applies to the present case."

The following order was passed by Aikman, J :—

I agree with the judgment of the learned Chief Justice in *Nepal Rai* v. *Debi Prasad* (1), which is against the appellant's contention. In my opinion the view expressed by the Taxing officer is right.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.

1908 *August* 4.

DHARAM KUNWAR (PLAINTIFF) *v.* BALWANT SINGH (DEFENDANT).*

Act No. I of 1872 *(Indian Evidence Act), section* 115—*Estoppel—Adoption—Suit by adoptive mother to set aside an adoption made by her.*

In a suit to set aside an adoption brought by the adoptive mother against her adopted son it was found that the plaintiff had represented that she had authority to adopt, and this representation was acted on by the defendant; that the ceremony of adoption was carried out on the faith of this representation; that the marriage of the defendant was likewise on the strength of

* First Appeal No. 98 of 1906, from a decree of Nihal Chandra, Subordinate Judge of Saharanpur, dated the 26th of February 1906.

(1) (1905) I. L. R., 27 All., 447.

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it celebrated, and the defendant performed the *sradh* ceremony of his adoptive father. It was further found that the defendant had been obliged to defend a suit brought against him by an alleged reversioner to the estate of his adoptive father, and that for this purpose he had incurred heavy liabilities. *Held* that the plaintiff was estopped from maintaining a suit for a declaration that the adoption was without authority and void. *Thakoor Oomrao Singh* v. *Thakooranee Mehtab Koonwer* (1) distinguished. *Sarat Chunder Dey* v. *Gopal Chunder Laha* (2), *Sukhbasi Lal* v. *Guman Singh* (3), *Durga* v. *Khushalo* (4), *Kannammal* v. *Virasami* (5), *Ravji Vinayakrav Jaggamath Shankarsett* v. *Lakshmibai* (6) and *Santappaya* v. *Rangappaya* (7) referred to.

THE facts of this case are fully stated in the judgment of the Court.

The Hon'ble Pandit *Sundar Lal*, Babu *Jogindro Nath Chaudhri*, and Messrs. *Ahmad Karim* and *Nihal Chand*, for the appellant.

Pandit *Moti Lal Nehru*, Dr. *Satish Chandra Banerji*, Munshi *Gulzari Lal*, Babu *Surendra Nath Sen* and Babu *Benode Bihari*, for the respondent.

STANLEY, C.J. and BANERJI, J.—The title to the Landhaura estate, an extensive and valuable estate situate in the district of Saharahpur and other districts, is involved in this appeal. The plaintiff, who is the widow of the late Raja Raghubir Singh, seeks for a declaration that she had no power to adopt the defendant Balwant Singh, and that she in fact never adopted him, and that a document which is called a deed of adoption, dated the 13th of January 1899, might be declared to be void.

Raja Raghubir Singh died on the 23rd of April 1868 at the age of about 20 years. After his death his widow, the plaintiff, Rani Dharam Kunwar, gave birth to a son on the 16th of December 1868, who was named Jagat Parkash Singh. This son died on the 31st of August 1870, and on the 4th of March 1877, the plaintiff adopted a boy Tofa Singh, who was afterwards renamed Raja Narendra Singh. This adopted boy died about 2½ years after his adoption, and on the 20th of January 1883 the plaintiff adopted another boy named Ram Sarup, who was renamed Ram Padab Singh. In June 1885 Ram Padab Singh died, and a few years afterwards the plaintiff took a boy named

(1) N.-W.P., H. C. Rep., 1863, p. 103 A. (4) Weekly Notes, 1882, p. 97.
(2) (1892) I. L. R., 20 Calc., 296. (5) (1892) I. L. R., 15 Mad, 486.
(3) (1879) I. L. R., 2 All., 366. (6) (1887) I. L. R., 11 Bom., 381.
(7) (1894) I. L. R., 18 Mad., 397.

Umrao Singh to live with her with a view to his adoption. This boy also died before adoption in May 1896. Then on the 2nd of June 1898 she determined to adopt another son, and amongst others two sons of Ram Newaz, namely, the defendant Balwant Singh and his brother Tungal Singh were brought to her for approval, and these two boys were permitted to live with her for some time. Ram Newaz is a man in humble circumstances owning only a small zamindari on which Rs. 50 per annum is paid for revenue. The defendant Balwant Singh was selected, and on the 13th of January 1899, the ceremony of his adoption is alleged to have been performed with all due formalities, and an agreement was executed by Ram Newaz as also by the plaintiff. It is this adoption which the plaintiff seeks to have declared invalid, her case being that she had no authority from her husband to adopt the defendant and that the adoption in fact never took place.

The learned Subordinate Judge found that the factum of the adoption was proved and that the plaintiff having adopted the defendant is estopped from alleging that she had no authority to make the adoption and accordingly dismissed the plaintiff's suit. From this decision the present appeal has been preferred.

On the 1st of May 1900, one Baldeo Singh, claiming to be the reversionary heir of Raja Raghubir Singh, brought a suit to have the adoption of the defendant set aside and in that suit impleaded as defendants both Rani Dharam Kunwar and Balwant Singh. The suit was dismissed on the 30th of May 1901 on the ground that the plaintiff was not the reversionary heir of Raja Raghubir Singh. The Court in its judgment also held that Raja Raghubir Singh did not give any authority to his wife to adopt a son and that therefore the adoption of Balwant Singh was invalid. An application was made to the Subordinate Judge by Rani Dharam Kunwar, in which she prayed that the finding that she had no authority to adopt might be embodied in the decree so as to enable her to appeal from it and have it reversed. This application was granted. From the decree of the Subordinate Judge Baldeo Singh appealed to the High Court. The appeal was heard before a Bench of which one of us was a member and on the 10th of December 1903 was dismissed. Four days after judgment was

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pronounced an application was made to the Court on behalf of Balwant Singh under the following circumstances. When the learned Subordinate Judge delivered his judgment his decree was that the plaintiff's claim be dismissed with costs, but subsequently on an application made by Rani Dharam Kunwar he directed that his findings on three issues should be added to the decree. The findings on the second and third issues were to the effect that it had not been proved that Rani Dharam Kunwar had authority from her husband to make the adoption, but that as a matter of fact she had adopted Balwant Singh. The application was that the findings on these issues should be struck out of the decree, the contention being that, as the plaintiff Baldeo Singh had no *locus standi* to contest the adoption, it was unnecessary for the Subordinate Judge to have tried any other issue and that the findings on any other issues were mere *obiter dicta*, which should not have been added to the decree. This application was resisted by the defendant Rani Dharam Kunwar, and the Court was frankly informed by the learned advocate who appeared for her that her object in desiring to have the additions in question made to the decree was that they might be used by her as *res judicata* in future litigation between herself and Balwant Singh. The Court acceded to the application and directed that the two findings to which we have referred should be struck out of the decree. The litigation which was then in contemplation is the suit out of which this appeal has arisen.

The learned Subordinate Judge did not determine, as we have said, whether Rani Dharam Kunwar had authority from her husband to adopt. He dismissed the suit on the ground that she by her conduct was estopped from alleging that no such authority was given to her. Whether or not he was right in this decision is the main question in this appeal.

As to the factum of the adoption there cannot be in our judgment any doubt whatever. The evidence shows that not merely was the adoption ceremony performed, but it was performed with great pomp and ceremony. Invitations to, amongst others, the principal European inhabitants, including the Collector, were issued, and a large number attended. The

proceedings lasted throughout the day, and photographs of the scene were taken, which have been produced. The fact of the adoption was indeed not seriously contested by the plaintiff's learned advocate. Not merely is it established by the oral evidence, which is voluminous, but by two documents, one bearing the seal of the plaintiff herself and the other signed by Ram Newal the father of the defendant. Those documents were registered on the 19th of January 1899, the execution of the one which bears the seal of the plaintiff being then admitted by her. In this last mentioned document there is a recital that Raja Raghubir Singh entertained during his life-time the wish that a son might be born to him who would fulfil the religious needs and become the owner of his estates, that he had no male or female issue in his life-time and that as the plaintiff was then pregnant he gave the following direction to her:—"If (God forbid) you give birth to a daughter, or if a son be born, but die after his birth, I strictly order you to adopt some boy so that he may perform my *sradh* ceremony and yours and perpetuate my name and after your death become the absolute owner and possessor of the whole of my estate. If (God forbid) the son who may be adopted under this authority should die in your life-time you will have power to make another adoption." Then there is a recital of the birth and death of her son Raja Jagat Parkash Singh, and that in compliance with the will of her husband the plaintiff had adopted a boy called Sewa Singh, and Ram Padab, both of whom died young and unmarried. Then the selection of Balwant Singh for adoption is mentioned and this is succeeded by the following passage:—"This 13th day of January 1898, after performing the necessary ceremony, I adopted Balwant Singh, son of Chaudhri Ram Newaz, to myself and my husband in the presence of the gentry, the district authorities and other European gentlemen and the members of my brotherhood, and Chaudhri Ram Newaz, the natural father of the said Balwant Singh, gave Balwant Singh to me as an adopted son." The document provides that so long as the plaintiff lives she should remain the owner and possessor of the estates. This instrument bears the signature of no less than 28 attesting witnesses, and as we have said

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was registered upon the admission of execution of the plaintiff herself.

In the contemporaneous document which was executed by Ram Newaz he admitted that he had given his son Balwant Singh to the plaintiff as an adopted son for her and her husband and that the usual religious ceremonies and those connected with the *bradari* had been performed with all publicity the same day. Six witnesses attest the execution of this document including the defendant Balwant Singh. In the first mentioned document there is a positive assertion by the plaintiff that she had authority to adopt Balwant Singh.

In addition to this we have the positive assertion of the plaintiff in her written statement in the suit of *Baldeo Singh* v. *Rani Dharam Kunwar and Balwant Singh* that she had authority to adopt the defendant. In the 8th paragraph of that written statement (No. 224 of the record) is the following passage:—"The defendant adopted Balwant Singh defendant under lawful authority with full publicity. The said adoption is valid in every respect." We have thus clearly established the representation of authority to adopt made by the plaintiff and also the fact of the adoption. In addition to this it is an admitted fact that the marriage of the defendant was carried out by and at the expense of the plaintiff. It is also not disputed that after his adoption the defendant performed the *sradh* ceremonies of Raja Raghubir Singh. In his evidence Balwant Singh deposed that "the first *kanagat* (*i. e.*, offering of cakes and oblations of water to the *manes* of ancestors) which took place after adoption was caused by the Rani to be observed by me, afterwards I continued observing the *kanagat* which took place." This is not contradicted. The question then is whether or not in view of those facts the Court below was right in holding that the plaintiff is estopped from denying her authority to adopt the defendant.

We are not aware of any case, and none has been cited to us, in which a plaintiff has successfully raised such a contention as has been laid before us by the plaintiff's learned advocate. In the most solemn way the plaintiff represented that she had authority to adopt and allowed the adoption of the defendant to be carried out with the utmost publicity and with great pomp and

ceremony. Moreover, she executed a document which should serve thereafter as evidence of the fact of the adoption. In the last paragraph of it we find the statement that "this document which is a deed of adoption has been executed by me and I have affixed my seal to it with my own hands in order that it may serve as evidence." After the adoption the defendant lived with the plaintiff as her adopted son, was married as such at her expense, and, as we have said, performed the *sradh* of her husband.

It is contended on her behalf that this conduct of the plaintiff does not operate as an estoppel; that in order to create an estoppel it must be shown that the person setting it up has suffered some loss or detriment, and that in this case the defendant could not show that he had suffered any loss or detriment; that both families belong to the same *gotra*, and that the defendant can return to his father's house and obtain his share of his father's property; that the fact that he held the position of a Raja for some years was beneficial to him and in no way detrimental. We do not agree as to this. The experience of the defendant as a Raja would entirely unfit him for the life of a cultivator. But if it were necessary to show pecuniary loss, we find that the defendant incurred heavy liabilities in defending his adoption in the suit brought by Baldeo Singh. In his evidence he deposed, and he is not contradicted, that Man Singh prosecuted this suit on his behalf and paid the expenses of it, and that some of the money expended by him was still due, and further that Lala Niranjan Lal, an Honorary Magistrate of Saharanpur, had lent him a sum of Rs. 23,000. If he had not been led to believe that he was the adopted son of Raja Raghubir Singh he would not have incurred these liabilities; large sums of money would undoubtedly not have been lent to him. So that, if it were necessary to prove detriment or loss from the conduct of the plaintiff on which the estoppel is based, these facts are in our opinion sufficient for that purpose. Section 115 of the Evidence Act regulates the law of estoppel. It prescribes that "when one person has by his declaration, act or omission intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed in any suit or proceeding between himself and such

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person or his representative to deny the truth of that thing." Lord Shand observed of this doctrine as follows:—"What the law and the Indian Statute mainly regard is the position of the person who was induced to act, and the principle on which the law and the Statute rest is that it would be most inequitable and unjust to him that if another by a representation made or by conduct amounting to a representation has induced him to act as he would not otherwise have done, the person who made the representation should be allowed to deny or repudiate the effect of his former statement to the loss and injury of the person who acted on it. If the person who made the statement did so without full knowledge or under error, *sibi imputet*. It may in the result be unfortunate for him, but it would be unjust, even though he acted under error, to throw the consequences on the person who believed his statement and acted on it as it was intended he should do." *Surat Chunder Dey* v. *Gopal Chunder Laha*, (1). To allow the plaintiff to repudiate the adoption would not only, we may observe, in this case be detrimental to the defendant, but to third parties, such as the creditors of the defendant, who advanced money to him on the faith of his position as Raja. It is highly probable also that acting on the same assurance his wife's father gave her in marriage to him. We know of no authority, and none has been cited to us, in which a widow who had taken a boy in adoption to her husband was afterwards successful in a suit for a declaration that the adoption was invalid. Two cases in this High Court were cited to us in which a similar suit failed. The first is the case of *Sukhbasi Lal* v. *Guman Singh* (2). In that case an adoptive father claimed a declaration that the defendant was not his adopted son, on the ground, amongst others, that he had not been adopted in the manner and according to the ceremonies required by Hindu Law and had failed to perform a certain agreement entered into by him with the plaintiff. In this agreement the plaintiff agreed on his part to consider the defendant as an adopted son. The defendant set up as a defence to the suit that the plaintiff could not be allowed to deny the validity of the adoption, as in a petition presented by him to the Revenue Court on the 27th of April 1860 he had declared that he had adopted

(1) (1892) I. L. R., 20 Calc., 296, at p. 311. (2) (1879) I. L. R., 2 All., 366.

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the defendant; that all the ceremonies of adoption required by Hindu Law had been performed, and that the defendant would succeed to his property on his death, and had confirmed such declaration by his subsequent conduct, and the defendant had been excluded from inheriting his natural father's property. The Court of first instance held that the plaintiff was estopped from denying the validity of the adoption. On appeal this decision was upheld. Spankie, J., in his judgment observed:—"The plaintiff having himself affirmed the adoption as having been fully and formally made after the performance of all the ceremonies required by the Hindu Law cannot now disaffirm it and sue for a declaration that it is invalid. Indeed when the adoption has once been absolutely made and acted on for years it cannot be cancelled. It is certain that an adopted child cannot renounce the family of his adoptive father. He is entirely separated from his own family when his natural father disposes of him. The adoptive father in accepting an adopted son is bound by his act which secures to the adopted son all the rights of a son born to the family. He is as much a son as if he had been begotten by his adoptive father." The only difference between this case and the case before us is that in it the adoptive father and the adopted son belonged to different *gotras*, whilst in this case they belonged to the same *gotra*. This does not, we think, materially differentiate the two cases.

The other case is that of *Durga* v. *Khushalo* (1). In that case, on the death of her husband Kishen Lal, the respondent Khushalo admitted in the Revenue Court that her husband had adopted Durga the appellant and prayed that her and his name might be recorded in respect of the property left by her husband. Subsequently the daughters of Kishen Lal sued Khushalo and Durga for a declaration that Durga was not the adopted son of Khushalo and obtained a decree. After that Khushalo brought a suit against Durga for possession of her husband's estate claiming as her husband's heir and denying the adoption of Durga. Straight and Tyrrell, JJ. dismissed the suit, holding that in view of her declaration and conduct in the Revenue Court the respondent was not competent to maintain the suit, and that as

(1) Weekly Notes, 1882, p. 97.

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between her and Durga she was estopped from maintaining it. This was a much weaker case for the application of the doctrine of estoppel than the one which is before us.

The learned advocate for the respondent relied upon the decision in *Thakoor Oomrao Singh* v. *Thakooranee Mehtab Koonwer* (1). In that case the plaintiff claimed to succeed to certain property as the adopted son of Thakoor Chutturbhooj Singh, the husband of the defendant Thakooranee Mehtab Koonwer. The daughter of Thakoor Chutturbhooj Singh was also impleaded as a defendant. The plaintiff appears to have been brought up and regarded as an adopted son and as the heir to the property up to the end of 1863, when in the record of the paper of administration of Kotla khas, the estate in dispute, the Thakooranee designated Oomrao Singh as one brought up and educated at her expense from childhood saying that his succession on her death was to depend upon her pleasure, it being conditional on his good behaviour. This declaration gave rise to ill-feeling and disputes, which ultimately led to the suit. The plaintiff set up the case that he was validly adopted. Mehtab Koonwer denied the adoption. The other defendant in her written statement denied that any authority to adopt had been given, and she also contended that an agreement of the 22nd of January 1864 which purported to settle the right in the property upon the plaintiff was not binding on her. It was contended that it did not lie in the mouth of Mehtab Koonwer to disclaim the plaintiff as a son and to deny his right to succeed to the property of her husband after her treatment and recognition of him as an adopted son for 14 years. It was held that she was not estopped from doing so, on the ground that it was never the intention of the Thakooranee that the plaintiff should supersede her in the management and enjoyment of the property without her consent, and that she had not precluded herself from setting up the rigid provisions of the Hindu Law; in other words, that if there had been no valid adoption she might resist the attempt to eject her upon that ground, seeing that she intended to retain possession during the term of her life. It was further held that a valid adoption was not proved by the plaintiff, and his suit was dismissed. It will be observed that in this case an

(1) N.-W. P., H. C. Rep., 1868, p. 103A.

estoppel could not be set up as against the second defendant, and that the suit was not one by an alleged adoptive mother to have an adoption set aside, but was a suit by the plaintiff claiming possession of the adoptive father's property. This case therefore does not give much support to the plaintiff's contention.

Upon the whole we are of opinion that the Court below rightly held that the plaintiff was estopped from setting up the alleged invalidity of the plaintiff's adoption. The plaintiff represented that she had authority to adopt, and this representation was acted on by the defendant. The ceremony of adoption was carried out on the faith of this representation. The marriage of the defendant was likewise on the strength of it celebrated, and the defendant performed the *sradh* ceremonies of his adoptive father. In addition to this we have the fact that the defendant resisted the suit of Baldeo Singh, in which the validity of the adoption was impeached, and was supported in his defence by the plaintiff and incurred heavy liabilities in raising funds for the purposes of his defence. These matters appear to us to put it out of the power of the plaintiff to maintain a suit for a declaration that her solemn act of adoption was without authority. We are supported in this view by the decision in the following cases :—*Kannammal* v. *Virasami* (1), *Ravji Vinayakrav Jaggannath Shankarsett* v. *Lakhshmibai* (2) and *Santappayya* v. *Rangappaya* (3). We might further say that the suit, in so far as it is a suit for a declaration that the plaintiff had no power to adopt, is one in which it is discretionary with the Court to give or refuse relief. We should hesitate in the circumstances of this case before passing a decree in favour of the plaintiff for such a declaration in view of her conduct and of the false position in which the defendant would be placed if her representation as to authority were held not to be binding on her. We therefore dismiss the appeal with costs.

Appeal dismissed.

(1) (1892) I. L. R., 15 Mad., 486. (2) (1887) I. L. R., 11 Bom., 381.
(3) (1894) I. L. R., 18 Mad., 397.